

Significant UK Court of Appeal Decision Confirms the Applicability of the UK's Proceeds of Crime Legislation to Illegality in Supply Chains

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The UK Court of Appeal recently held that the National Crime Agency's decision not to investigate whether cotton goods manufactured in China and imported to the UK were the product of forced labour was unlawful — a decision that could have significant impact on organisations.

On 27 June 2024, the Court of Appeal delivered its judgment in *R. (on the application of World Uyghur Congress) v National Crime Agency*.¹ The case followed the High Court's judgment in January 2023 concerning a judicial review application brought by the World Uyghur Congress (WUC), a nongovernment organisation which promotes the interests of exiled Uyghur groups, relating to the decision of certain UK enforcement agencies, including the National Crime Agency (NCA), not to investigate alleged criminal wrongdoing. The High Court decided against the WUC, concluding that the agencies had not erred in law in deciding not to use their investigatory powers. We considered the High Court's decision in our 20 February 2023 alert, "[UK High Court Judgment Spotlights Importance of Managing Supply Chain Risks](#)."

In its judgment, the Court of Appeal overturned the decision of the High Court, holding that the NCA's decision not to investigate had been unlawful, and the question of whether to investigate would "be remitted to the NCA for reconsideration."² The decision confirmed that criminal conduct in a supply chain can attract liability for money laundering offences under the Proceeds of Crime Act 2002 (POCA) and that there is a low bar for related investigations to be initiated. It also clarified the limited application of the "adequate consideration" exception in this context. It is not yet clear whether the Court of Appeal's decision will be appealed to the UK Supreme Court, but a spokesperson for the NCA noted that the agency was considering its next steps.

Background

In 2022, the WUC brought a judicial review claim against the Home Office, Her Majesty's Revenue and Customs (HMRC), as it then was, and the NCA in relation to their decision not to investigate exports of cotton products manufactured in the Xinjiang Uyghur Autonomous Region (XUAR) from China to the UK. The WUC had provided the enforcement agencies with "a large amount of evidence concerning the issues of forced labour and human rights abuses in the XUAR,"³ such that the High Court noted there was "undisputed evidence of the widespread use of forced labour in the XUAR to produce cotton products."⁴ As part of their judicial review claim, the WUC asserted that the agencies ought to have investigated whether the cotton products manufactured in XUAR and imported into the UK were the product of forced labour or other human rights abuses.

In January 2023, the High Court decided against WUC and determined that the requirements of POCA were not met. The WUC appealed the High Court's decision to the Court of Appeal in May 2024.

¹ [2024] EWCA Civ 715.

² *Ibid*, para. 59.

³ *R. (on the application of World Uyghur Congress) v Secretary of State for the Home Department* [2023] EWHC 88 (Admin), para. 19.

⁴ *Ibid*, para. 70.

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Court of Appeal Decision

The appeal related to the “single, narrow issue”⁵ of whether the NCA had acted correctly when deciding not to exercise its civil or criminal investigatory powers under POCA to investigate the import of certain cotton products from XUAR.

The Court of Appeal determined that the NCA’s decision not to launch an investigation was based on two propositions that that were “wrong as a matter of law,” namely that:

- It was necessary to be able to identify specific criminal property and criminal conduct before there can be a proper basis for a POCA investigation.
- The provision of ‘adequate consideration’ anywhere in the supply chain would prevent goods imported to the UK from being identified as criminal property or recoverable property for the purposes of POCA.⁶

These findings followed a number of concessions by the NCA which, in effect, resiled from the position taken in the High Court proceedings:

- Specific Criminal Property and Criminal Conduct

In its letter communicating the decision not to investigate the cotton imports, the NCA stated that a POCA investigation would be “misconceived” in the absence of specifically identified criminal property and criminal conduct. The High Court concurred with the NCA’s view. However, overturning that decision, the Court of Appeal found it was “obvious” that the “investigating body does not need to know that recoverable property exists before commencing an investigation, since the specific purpose of that investigation may be to ascertain that fact.”⁷ In particular, the Court of Appeal relied on the definition of “Investigations” in section 341 of POCA, which provides that a civil recovery investigation is “an investigation for the purpose of identifying recoverable property or associated property and includes – a) *investigation into whether property is or has been recoverable property or associated property*”(emphasis added).⁸

The Court of Appeal also noted that insufficient evidence at the time the goods were imported would not preclude the launch of an investigation under POCA.⁹ The court added that there was “legitimate concern” that the High Court judgment could be understood as “endorsing the proposition that there is a

need to establish criminal conduct or criminal property before an investigation under POCA can begin.”¹⁰ As a result, there would be a risk that enforcement agencies would be discouraged from investigating potential corruption (particularly where it occurs overseas) in the absence of upfront “concrete evidence of particular crimes carried out by particular persons.”¹¹

- Adequate Consideration

Section 329 of POCA establishes the offence of acquiring, using or possessing criminal property. Section 329(2)(c) establishes an exemption if a person acquires or has possession of criminal property for “adequate consideration.” In the High Court proceedings, the enforcement agencies submitted that, even if it were possible to identify a specific product as criminal property, an offence would not have been committed by a UK entity if the product had been the subject of a transaction for adequate consideration. The enforcement agencies argued that the relevant criminal property would be the proceeds of that transaction in the hands of the seller, and not the product in the hands of the purchaser.¹² The High Court agreed with this contention.¹³

However, the Court of Appeal disagreed with the High Court’s interpretation of section 329(2)(c). The High Court appeared to agree with the submission that “where the importer is paying market value for the purchased goods they would not be tainted as a result of the operation of [section 329],”¹⁴ but the Court of Appeal considered that this proposition was wrong in law. In particular, the provision of adequate consideration by someone who can rely on the exception does not preclude the property from being “criminal property” in the hands of someone else with the requisite knowledge or suspicion.¹⁵

The Court of Appeal also considered section 308 of POCA, which provides an exception to the civil recovery of property obtained through unlawful conduct, where a third party obtains the property in good faith, for value and without notice that the property was recoverable. In such circumstances the property ceases to be recoverable in the hands of the third party. In its judgment, the Court of Appeal confirmed that, if an importer suspected the goods to be the product of forced labour or other human rights abuses, they would not be able to rely on the section 308 exception to avoid the property being seized.¹⁶

⁵ [2024] EWCA Civ 715, para. 1.

⁶ Ibid, para. 59.

⁷ Ibid, para. 47.

⁸ Ibid.

⁹ Ibid, para. 49.

¹⁰ Ibid, para. 54.

¹¹ Ibid, para. 55.

¹² [2023] EWHC 88 (Admin), para. 21.

¹³ Ibid, para. 85.

¹⁴ [2024] EWCA Civ 715, para. 56.

¹⁵ Ibid, paras. 33 – 37.

¹⁶ Ibid, para. 57.

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The Court of Appeal quashed the High Court's decision and remitted the question of whether to carry out an investigation under POCA back to the NCA for reconsideration.¹⁷ A spokesperson for the NCA noted that the agency was considering its next steps.

Takeaways

The Court of Appeal's judgment is a significant clarification of the application of POCA to illegal conduct in supply chains. For companies trading goods, the impact could be substantial—buying and selling goods with the requisite level of knowledge or suspicion that they are the product of forced labour may lead to a money laundering investigation and result in liability attaching to the company, including penalties and/or

the confiscation of the goods. Financial institutions involved in processing any associated payments could also be unlawfully handling the proceeds of crime.

In the UK, in light of this judgment and given the recent changes in attributing criminal liability to companies,¹⁸ supply chain risks require increasingly careful consideration, especially given the potential liability of any individuals involved and the reputational damage that may result from any supply chain issues emerging. For many organisations operating internationally, these developments in the UK will sit alongside their work to comply with supply chain-specific legislation such as the US's Uyghur Forced Labor Prevention Act and the EU's Corporate Sustainability Due Diligence Directive.

¹⁷[2024] EWCA Civ 715,, para. 59.

¹⁸We considered these changes to corporate criminal liability in our 26 February 2024 alert, "[Economic Crime and Corporate Transparency Act 2023 – Key Developments.](#)"